

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-31, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-5, 8-15, 18-25, and 28-31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2002/0104099 ("Novak"). Claims 6, 7, 16, 17, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Novak, in view of U.S. Patent No. 7,174,512 ("Martin"). The Applicant respectfully traverses these rejections at least based on the following remarks.

#### **REJECTION UNDER 35 U.S.C. § 102**

##### **I. Novak Does Not Anticipate Claims 1-5, 8-15, 18-25, and 28-31**

The Applicant now turns to the rejection of claims 1-5, 8-15, 18-25, and 28-31 under 35 U.S.C. 102(e) as being anticipated by Novak. With regard to the anticipation rejections under 102, MPEP 2131 states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See *id.* (internal citation omitted).

Without conceding that Novak qualifies as prior art under 35 U.S.C. 102(e), the Applicant respectfully traverses this rejection as follows.

**A. Rejection of Independent Claim 1 under 35 U.S.C. § 102(e)**

With regard to the rejection of independent claim 1 under 102(e), the Applicant submits that Novak does not disclose or suggest at least the limitation of "organizing, at said first location, said located media and at least a portion of broadcast media and/or transferred media into channels," as recited by the Applicant in independent claim 1.

The Final Office Action states:

With respect to Claim 1, the claimed "locating media stored locally at least at a first location in the communication network; organizing, at said first location, said located media and at least a portion of broadcast media and/or transferred media into channels" is met by the Novak reference that teaches an upload source 122 sending media files to a local studio 106 and having control as to their scheduling in a 'synthetic' channel – whereby uploaded media files may consist of recorded audio/video clips of television programs (Figs. 1, 4; paragraphs 0010, 0026, 0039, 0041, 0056, & 0057).

See the Final Office Action at page 3. Initially, the Applicant points out that none of the cited paragraphs (paragraphs 0010, 0026, 0039, 0041, 0056, & 0057), or any remaining paragraphs of Novak, disclose that the upload source 122 communicates media files to the local studio 106. Only paragraph 0041 of Novak discloses that the upload source 122 can have an agreement with the local studio 106 and notify studio 106 of the web address of web site 124, which maintains the uploaded media for the

synthetic channel. In this regard, the cable subscribers can be provided with media programs from the server or web site 124. Notwithstanding, the Applicant points out that none of the data that is uploaded by the upload source 122 to the server or web site 124 includes any broadcast programming.

Referring to FIG. 1 of Novak, the Applicant points out that the upload source 122 can upload media to the web site or server 124. See Novak at ¶¶ 0040-0041. In addition, the uploaded media may include personal media or recorded clips of TV programs, as described in more detail in ¶ 0039 of Novak. **However, the media uploaded to server 124 does not include any television broadcast programming (the Applicant notes that recorded clips of TV programs do not constitute broadcast media as the video clips are personal recordings that are not being broadcast, i.e., mass-communicated). As seen from Novak's FIG. 1, such broadcast media is provided separately by the cable service provider 108 over the cable network 134.** In this regard, Novak does not disclose or suggest at least the limitation of "organizing, at said first location, said located media and at least a portion of broadcast media and/or transferred media into channels," as recited by the Applicant in independent claim 1.

Furthermore with regard to the rejection of independent claim 1 under 102(e), the Applicant submits that Novak does not disclose or suggest at least the limitation of "transparently transferring from said first location, at least a portion of said organized

channels to at least a second location within the communication network," as recited by the Applicant in independent claim 1.

The Final Office Action states:

The claimed "transparently transferring from said first location, at least a portion of said organized channels to at least a second location within the communication network" is met by the Novak reference that teaches a user at a second location 152 receiving media files associated with the 'synthetic' channel when it is selected for viewing – whereby a 'synthetic' channel is added to an user's EPG 153 at a 2nd location, via an emailed token or other electronic file which allows for a 'transparent' addition of the 'synthetic' channel **since the user at the 2nd location is unaware of the process in which the 'synthetic' channel is added to their EPG** (Figs. 1,2,4, 11; paragraphs 0041, 0058, 0059, 0085, & 0086).

See the Final Office Action at page 3 (emphasis added). The Applicant respectfully disagrees with the above argument, especially the above bolded portion. Referring to FIG. 4 of Novak, the Applicant points out that at step 406, a token or electronic file is **sent to the end user** to subscribe the end user's terminal (set top box 152) to the synthetic channel. More specifically, Novak, at ¶ 0058, discloses that the individual (who uploads the media to server or web site 124) **emails the token or other electronic file to the end user**. Obviously, the user will be aware of such emailed token. In this regard, Novak also does not disclose that at least a portion of the channel itself is transparently transferred to at least a second location within the communication network, as recited in Applicant's claim 1. Furthermore, the Applicant submits that the fact that a token or an electronic file is transferred to effectuate subscription to the synthetic channel illustrates that the transfer of information is not transparent.

Accordingly, independent claim 1 is not anticipated by Novak and is allowable. Independent claims 11 and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the reference cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

**B. Rejection of Dependent Claims 2-5, 8-10, 12-15, 18-20, 22-25, and 28-31**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, and 21 under 35 U.S.C. § 102(e) as being anticipated by Novak has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-5, 8-10, 12-15, 18-20, 22-25, and 28-31 depend from independent claims 1, 11, and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-5, 8-10, 12-15, 18-20, 22-25, and 28-31.

**II. The Proposed Combination of Novak and Martin Does Not Render Claims 6, 7, 16, 17, 26, and 27 Unpatentable**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, and 21 under 35 U.S.C. § 102(e) as being anticipated by Novak has been overcome and requests that the rejection be withdrawn. Additionally, since the additional cited reference (Martin) does not overcome the deficiencies of Novak, claims 6, 7, 16, 17, 26, and 27 depend from independent claims 1, 11, and 21, respectively, and are, consequently, also respectfully submitted to be allowable at least for the reasons stated above with regard to allowability of claim 1. The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 6, 7, 16, 17, 26, and 27.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-31 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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